LeMond Cycling, Inc. v. Trek Bicycle Corporation
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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

LEMOND CYCLING, INC.,	)
Plaintiff,	)
vs.	) Civil No.
	) 08-1010 (RHK-JSM)
TREK BICYCLE CORPORATION,	)
Defendant/Third-Party Plaintiff,	)
vs.	)
GREG LEMOND	)
Third-Party Defendant.	)

Deposition of THOMAS FOX, taken on behalf of Plaintiff LEMOND CYCLING, INC.; Third-Party Defendant GREG LEMOND, at 2049 Century Park East, Suite 3400, Los Angeles, California, beginning at 9:42 a.m., Tuesday, July 14, 2009, before Cila Meyer, No. 4914, a Certified Shorthand Reporter.

Q On page 2 of your expert report, in that sentence again "with the action and statements" I'm referring to.

A **Uh-huh.**

Q It ends with -- I'll just read it again.

"After review of these materials, it is my opinion that Mr. LeMond's actions and statements are at odds with the very essence of what a company such as Trek should expect from someone with whom they have an endorsement relationship, let alone a licensing partnership."

A **Right.**

Q What did you mean by "licensing partnership"?

A **I was making a distinction between an athlete you sign to sell the product as it currently exists on the shelf and a relationship you create to customize a line and sell it with that person's name on it.**

Q Had anybody ever told you that the relationship between Mr. LeMond and Trek was a licensing partnership?

A **Yes. It was very clear in the documents that I read.**

Q What documents?

A **There's -- there are several agreements between**

Trek and Mr. LeMond. When they started the LeMond Cycling, that to me -- I'm referring to that as a licensing agreement, when they started LeMond's Cycling. So I looked at the documents that related to Trek and Greg signing a contract to get in to business together. I reviewed that. I determined that to be a licensing agreement.

Q Okay. You determined that to be a licensing partnership?

A Licensing partnership, yes.

Q Why is the fact that the relationship between LeMond and Trek as a licensing partnership important to your expert opinion?

A I think -- as I said, I make a distinction between a company that signs an athlete to sell the product that they're already making. In that case there's very little extra work that's being done. They're taking a product that's already being manufactured, and they're using that athlete's name and likeness either in advertising or in promotion, but they're not changing the bottle. They're not changing the formula. There's really very little that's going into it other than creating marketing materials.

When I look at a licensing partnership, there are branded products, specific products that are being

created. To me that's a much more in-depth type of relationship. I think it's much more difficult to unwind, but I just think it's -- there's much more collaboration about the products that are getting produced. So I think there's a much more involved process.

Q If you look on the spectrum of relationships between an athlete and a company, would an endorsement relationship be on one end and a licensing partnership be on the other?

A I'd say --

MR. WEBER: Let me -- just a second -- object vague as to ends of what? I just want to make sure we're clear as to what the label is --

MR. MADEL: I understand your --

MR. WEBER: What the label --

MR. MADEL: -- your objection is vague. I understand that.

Go ahead and answer.

THE DEPONENT: Can you define your spectrum, though?

BY MR. MADEL:

Q You were just about to answer. Go ahead.

A I want to make sure I understand what you mean.

Q I'm trying to get an idea of what -- you just

Q Here you also say, "and tell a differentiating story of superior performance" --

A Yes.

Q -- "for their products because they bore the name of a true innovator in the sport who won at the highest level"; right?

A I see that, yes.

Q You also consider Mr. LeMond a true innovator in the sport of cycling?

A That was his -- that was his brand, so to speak, when I first became associated with him. He was wearing the different helmet. He was designing different handlebars. His performance in the Tour de France, at least from, you know, a layman's perspective or, you know, a noncycling fan's perspective was, he was winning because he was outthinking people and because of his technological expertise, yes.

Q Let me go to that sentence again, fourth full paragraph on page 2 that we talked about.

A Uh-huh.

Q You say here, "it stands to reason that consumers and dealers would be upset by this activity"; right?

A Yes.

Q What empirical evidence did you rely on with

respect to that sentence?
A "Empirical" meaning specific data?
Q Yes.
A I'm looking at -- I'm looking at sort of the consumer response to his comments. So to the extent that those comments, and those e-mails, and those letters, and the public outcry is empirical, that's what I was using. Likewise, for the dealers, I'm looking at dealer comments and thinking the same. I'm listening to what they're saying. And I'm putting myself -- as I said earlier, I'm putting myself in their shoes and saying "if I were them this is -- I can certainly understand why they would be feeling that."
Q So the evidence that you relied upon with respect to that sentence, last full sentence, the fourth full paragraph on page 2 would be the dealer comments provided to you by Trek and the consumer comments provided to you by Trek?
A Certainly at least those. And I'm trying to think if -- then I'm looking at some of the ESPN things as well, when you've got two columnists including it in the Just Shut Up category, I'm sort of using all of those -- that information to sort of flavor my opinion, yes.
Q Is there anything else?

A Because this is really a dispute between what Greg LeMond did and said as a paid endorser to Trek. I'm not here to talk about, you know, whether he's been on a life-long crusade against doping. To me that's sort of not the issue. The issue is his specific attacks on another Trek endorser and whether that was what they should have expected, given the partnership and the relationship they had.

Q How is that different between Greg LeMond and Charles Barkley? Insofar, if it's relevant to look at what Charles Barkley did before you signed Charles Barkley, why isn't it relevant to look at what Greg LeMond did and said before you signed Greg LeMond?

A I'm sure Trek looked at everything.

Q No. I'm asking you. Why didn't you look at it?

A Because I've been asked to look at the dispute between Trek and Greg LeMond. To be perfectly honest with you, to me this isn't about Greg LeMond being outspoken about doping, with all due respect. It's about his accusations against another Trek endorser. So to the extent that -- if he had a foundation or a long history of fighting and standing up against doping, that would have been great. It would be the same issue from my perspective as a marketer; that once he was signed by

Trek, he chose to attack another endorser and do so in a way that diminishes his own credibility and influences, you know, people's perceptions of Trek.

Q Is there a circumstance where Greg LeMond could have said anything negative about Lance Armstrong while signed with Trek?

A Maybe. I don't know. Relative to doping?

Q Yeah. Or anything.

A I mean, I think -- I think it was reasonable for Trek, as I said, to expect that Greg LeMond should have stuck to facts when referring to things related to Lance Armstrong. I think it's absolutely their expectation that because there's a relationship between both of those athletes in the company, that Greg would stick to the facts. And, you know, I think some of the things he was saying were not factual. I think that's why there was public outcry, you know. Consumers believed that because Lance has been tested many times and has never tested positive, that there's no proof.

Q So Lance Armstrong has never tested positive for performance-enhancing drugs?

A Not that I'm aware of.

Q Okay. I asked you. I'll ask you again. Can you provide me with a circumstance where Greg LeMond could say something negative about Lance Armstrong and

Q And he's a role model to kids; right?

A Kids interested in cycling? Kids that have cancer? People touched with cancer?

Q Yes. I mean, you said that he transcended the sport; right?

A Yes.

Q To the extent that he has cheated to get to where he is would be relevant as a parent to you to not have your child follow in those sorts of footsteps; right?

A Yes. If Lance has cheated to get where he is, it would be a real issue.

Q But the same time you believe that because Mr. LeMond had a business relationship with Trek, it was under his obligation to shut up in that regard; right?

A You've phrased that question in a very interesting way. I don't think, regardless of what Mr. LeMond believed about Lance Armstrong and his possible doping, I don't believe it was appropriate, given the business relationship that they had together, for him to be calling him out in the press in that way. I think the first time he did it, he retracted the statement and sort of agreed with it. I guess the issue, fundamentally, for me is I looked at this as a marketer in this case is that he kept on doing it. So

raising the issue, keeping it out of the public eye, helping investigators to solve this problem called doping, even if it involved Lance Armstrong, behind the scenes, have at it, go at it.

Publicly -- marketing is creating an impression in the consumer's mind that you have a superior product or you have something that they want to buy and then getting them to walk in and make that purchase. We're talking about a marketing relationship here. I'm not talking about sort of moral right and wrong, and the overall issues with the sport, and the notion of one athlete taking a stand against doping. I think, you know -- I think if more athletes took a stand against doping, it would be a great thing. I'm talking about the marketing relationship between this company called Trek and Greg LeMond and Lance Armstrong and the fact that he was calling him out on things that were not public knowledge, and the consumer and the dealers clearly didn't want to continue to hear. That's what I've reacted to as a marketer.

Q It would have been all right for Mr. LeMond to go to federal investigators with respect to Mr. Armstrong?

A I don't know how anybody would have known that; right? I mean, I think, if he wants to go behind the

scenes and say "I want to be a positive force behind, you know, helping get drugs out of this sport. Here is information I have related to everyone," you know, I don't think anybody would have stopped him there. I think the fact that he's in public, doing interviews, talking about it is a problem.

Q So it's really the publicity part of this that is the problem with respect to Trek?

A We're talking about a marketing relationship, yes. It's what the consumer, the dealer, and everyone sees. It's the ability for Greg LeMond to do and say things that helped the sales of his bike, the ability for Lance Armstrong to do and say things that helped the sale of Trek bikes, and their ability to do the exact opposite. That's really where I'm focused here.

Q Did Mr. LeMond's statements regarding Floyd Landis harm his reputation?

A Did Mr. Armstrong's comments about Floyd?

Q No. Mr. LeMond's statements regarding Floyd Landis harm his reputation?

A You know, it's funny. Floyd tested positive. So, you know, I think Floyd Landis' reputation is already tainted. So did he -- I don't know whether he said them before or after. But once he's been found, and it's proven, and the public has sort of ruled on

A I think from what I can gather reading the documents, their dealers were incredibly upset. And their business is sort of driven by the dealers. When a consumer walks in to buy a bike, unless you have support of those dealers, it's very difficult for a consumer walking in who doesn't know what they want to get steered towards that bike. And I think, you know, Trek is a company that always had, you know, great integrity, great relationships with their dealer was, you know, allowing Greg LeMond to continue to say these things and still support him with product, I think it undermined their credibility. I think the dealers were disenchanted. They clearly weren't pushing LeMond products. And Trek was making money on those products, too.

Q Do you know how -- if Trek was damaged in dollars in any amount?

A I don't have -- I don't know.

Q Did you ever look at any damage that Mr. LeMond's actions or statements caused Trek sales?

A I didn't look at specific sales data.

Q But did you look at any -- did you try to measure in any numerical form any amount of damage that Mr. LeMond caused Trek?

A In any numeric -- no. What I did was looked at

the dealer comments, interpreted their lack of support for that line and understanding, you know, just based on what I read, how those bikes get sold, that that clearly was not going to be a good thing for their sale.

Q And your evidence of the dealer comments again were the ones that were the files marked as "Dealer Comments"?

A Right.

Q Would you expect dealers of Trek bicycles, that disagreed with Trek's approach, to send them -- send Trek a communication saying, you know, "We really support LeMond over you?

A I think from what I can gather, given the importance of independent bike dealers to their business, that they had an ongoing dialogue with those people. Those people were the life blood of their sales. And that that ongoing dialogue would result in great feedback from those people. They're their front line. Without knowing exactly what's going on in a bike store, I don't think Trek has a viable business, regardless of the product they're producing. So I would expect that if a dealer truly thought something was in their best interest or not in their best interest, you'd hear from them in both cases.

Q Have you ever heard of any complaints from